

REMARKS

Claims 1-21 are pending in the present application. Claim 5 has been amended.

Rejection under 35 U.S.C. § 103(a)

According to the text of the Office Action, claims 1-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,695,400 to Fennell, Jr. (“Fennell”) in view of U.S. Patent No. 6,009,274 to Fletcher et al (“Fletcher”).

Fennell teaches a system to allow a quiz or game show, such as “JEOPARDY”, to be played by a number of players via a computer network. In a game show, players hit the “buzzer” when the player believes he or she knows the answer to a question. Fennell describes a system that enables a host computer to determine which terminal was the first to “buzz-in” a response, and as a result, allow the user at that terminal to take a turn. In contrast, the present invention is totally unrelated to the Fennell patent, being a system for *dynamically changing* a computer program while it is executing.

The Office Action, at page 3, states that Fig. 2 of Fennell shows issuing a command to temporarily modify the computer code of the computer game while the computer game is executing. With respect, Fennell does not show this. When Fennell states that a terminal is assigned a “degree of control of the game”, this does not mean that the computer code operating on the terminal is modified. Nowhere does Fennell teach or suggest that computer code is modified, or that a computer game is executed in accordance with modified code. In contrast, the computer code of Fennell is initially programmed to allow a user to “take a turn”

(col. 1, line 53; and col. 4, line 10) when the user is first to “buzz”.

With respect, the Examiner has misunderstood “control” in Fennel -- it is not control to modify computer code (as recited in the claims), but rather, allowing a user to “take a turn” in a game.

Fletcher teaches a system for updating software components. As stated in Fletcher, the file with the update “is installed and the components updated without rebooting system software.” However, in Fletcher, the software that is itself updated must be stopped and restarted during the update process. It is only the system software (i.e., the operating system such as Windows) that need not be rebooted. Thus, in some circumstances, Fletcher allows software to be updated without rebooting the operating system, but in all instances, the software or service that is updated (i.e., the application program) must be stopped and restarted. This is in sharp contrast to the present invention where the application program can be updated “without having to shut down the application program” (as recited, for example, in claim 11).

In contrast to the present invention, Fletcher makes it clear that the application program must be shut down and restarted as part of the update process:

- “The installer replaces the older components with the newer versions, unloads the Agent, and reloads and restarts the Agent and its services.” (col 9, lines 24-26).
- “Because some of the components may be in use at the time of update, the components are not immediately loaded and used.” (col 12, lines 64-66).

- “Then, the next time that the operating system is rebooted, this modified registry information is used by the operating system to pick up the updated components.” (col. 13, lines 2-4).
- “However, .exe files (and any .dll files associated therewith), when loaded and running cannot be updated until the system is rebooted.” (col. 13, line 8-10).
- “... and force the thin smart agent and all of its components to end and unload. ... The ‘magic bullet’ can then tell the service manager to restart the service which causes the new binary image to be reloaded and then the thin smart agent can reload the needed dynamic components.” (col. 13, lines 59-65).

When Fletcher states at col. 13, lines 51-52 that “a service can be temporarily stopped and updated without physically rebooting the system”, Fletcher is making it clear that during an update process the application must be stopped, even though the operating system need not be rebooted. This is in sharp contrast to the present invention, where the application program can be updated “while the application program is executing” and “without having to shut down the application program”.

Accordingly, it is respectfully submitted that Fletcher teaches away from the present invention and highlights the problem that the present invention solves.

When the Examiner refers to col. 5, lines 43-46 of Fletcher, this is a reference to not having to reboot the operating system. It is not a reference to not rebooting the application program. This is made clear at col. 13, lines 51-52. Moreover, at col. 5, lines 49-52, it is made clear that changes do not take effect immediately, but only upon a reboot (“... the

registry path is change to point to a file not currently being used, but that will be used at the next reboot to cause an update to system components.”)

When the Examiner refers to col 9, lines 3-16 of Fletcher, this is a reference to updating operating system software (e.g., “system level (OS) software components”) and not application program software. Fletcher makes in clear in the next paragraph (col. 9, lines 24-29) that the Agent must unload, reload and restart, which is in sharp contrast to the present invention.

Neither Fletcher nor Fennel teach that an application program being updated can continue to run while being updated.

With respect to dependent claims 6, 7, 8 and 9, the text of the Office Action states that these features are "notoriously well known." The Examiner has provided no evidence of this.

In view of the above, reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) is respectfully requested.

CONCLUSION

The Applicant respectfully submits that the present case is in condition for allowance and respectfully requests that the Examiner issue a notice of allowance.

The Office is hereby authorized to charge any fees determined to be necessary under 37 C.F.R. § 1.16 or § 1.17 or credit any overpayment to Kenyon & Kenyon **Deposit Account No. 11-0600**.

The Examiner is invited to contact the undersigned at (202) 220-4255 to discuss any matter concerning this application.

Respectfully submitted,

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Shawn W. O'Dowd
(Reg. No. 34,687)

KENYON & KENYON
1500 K Street, N.W.
Suite 700
Washington, D.C. 20005
Tel: (202) 220-4200
Fax: (202) 220-4201
DC1-466,909